

ESTTA Tracking number: **ESTTA224336**

Filing date: **07/15/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Robin A. Schachter
Granted to Date of previous extension	07/16/2008
Address	1201 Third Avenue Suite #3400 Seattle, WA 98101-3034 UNITED STATES

Name	Quench Co., LLC
Granted to Date of previous extension	07/16/2008
Address	600 University Street, Suite 1925 Seattle, WA 98101 UNITED STATES

Correspondence information	Robin A. Schachter Ryan Swanson & Cleveland, PLLC 1201 Third Avenue Suite #3400 Seattle, WA 98101-3034 UNITED STATES schachter@ryanlaw.com, alexander@ryanlaw.com Phone: (206) 464-4224
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Applicant Information

Application No	78449413	Publication date	03/18/2008
Opposition Filing Date	07/15/2008	Opposition Period Ends	07/16/2008
Applicant	The Coca-Cola Company One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES		

Goods/Services Affected by Opposition

Class 032.

All goods and services in the class are opposed, namely: Beverages, namely, drinking waters, flavored waters, mineral and aerated waters; and other non-alcoholic beverages, namely, soft drinks, energy drinks and sports drinks; fruit drinks and juices; syrups, concentrates and powders for making beverages, namely, flavored waters, mineral and aerated waters, soft drinks, energy drinks, sports drinks, fruit drinks and juices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	555788	Application Date	09/20/1947
Registration Date	03/11/1952	Foreign Priority Date	NONE
Word Mark	QUENCH		
Design Mark			
Description of Mark	THE TRADE-MARK CONSISTS OF THE WORD "QUENCH" SUPERIMPOSED UPON THE REPRESENTATION OF A CITRUS FRUIT.		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1946/01/16 First Use In Commerce: 1946/01/16 CARBONATED CITRUS-FLAVORED SOFT DRINK AND THE CONCENTRATE FROM WHICH THE SAME IS MADE		

U.S. Registration No.	555789	Application Date	09/20/1947
Registration Date	03/11/1952	Foreign Priority Date	NONE
Word Mark	QUENCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1946/01/16 First Use In Commerce: 1946/01/16 CARBONATED CITRUS-FLAVORED SOFT DRINK AND THE CONCENTRATE FROM WHICH THE SAME IS MADE		

U.S. Registration No.	746274	Application Date	04/23/1962
Registration Date	03/05/1963	Foreign Priority Date	NONE
Word Mark	QUENCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1946/01/00 First Use In Commerce: 1946/01/00 Grapefruit and Lemon Flavored Soft Drinks and Concentrates for Making the Same		

U.S. Registration No.	1741580	Application Date	12/23/1991
Registration Date	12/22/1992	Foreign Priority Date	NONE
Word Mark	DIET QUENCH		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 1991/11/25 First Use In Commerce: 1991/11/25 soft drinks		
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U.S. Registration No.	1745989	Application Date	12/23/1991
Registration Date	01/12/1993	Foreign Priority Date	NONE
Word Mark	DIET QUENCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1991/11/25 First Use In Commerce: 1991/11/25 soft drinks		

U.S. Registration No.	1064231	Application Date	11/03/1975
Registration Date	04/26/1977	Foreign Priority Date	NONE
Word Mark	QUENCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1975/06/00 First Use In Commerce: 1975/06/00 SALIVARY STIMULANT-NAMELY, A LEMON FLAVORED LIQUID CONCENTRATE		

U.S. Registration No.	1047788	Application Date	11/03/1975
Registration Date	09/07/1976	Foreign Priority Date	NONE
Word Mark	QUENCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/09/00 First Use In Commerce: 1975/09/00 CHEWING GUM		

Attachments	71535140#TMSN.gif (1 page)(bytes) 71535141#TMSN.gif (1 page)(bytes) 72142803#TMSN.gif (1 page)(bytes) 74232555#TMSN.gif (1 page)(bytes) Quench Opp.pdf (5 pages)(212568 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/ras/
Name	Robin A. Schachter
Date	07/15/2008

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7 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
8 THE TRADEMARK TRIAL AND APPEAL BOARD

9 QUENCH CO., LLC, a Washington limited
10 liability company,

11 Opposer/Registrant,

12 v.

13 THE COCA COLA COMPANY, a Delaware
14 corporation,

15 Applicant.

NO.

Application No. 78449413

NOTICE OF OPPOSITION

16 TO THE COMMISSIONER OF TRADEMARKS:

17 Quench Co., LLC, a Washington limited liability company with its principal place of
18 business at One Union Square, 600 University Street, Suite 1925, Seattle, Washington 98101
19 believes it is and will be damaged if the Applicant's registration of the trademark SPRITE
20 QUENCH, Application No. 78449413 is permitted, and hereby opposes the registration of the
21 Applicant's trademark.

22 Solely for the purposes of this pleading Opposer Quench Co., LLC alleges the
23 following grounds of opposition:

24 1. Quench Co., LLC is the owner of Registration No. 555,788 for the mark
25 "Quench" and design in Class 32 for "carbonated citrus-flavored soft drink and the
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1 concentrate from which the same is made.” This registration was issued on March 11, 1952,
2 and is on its third renewal.

3 2. Quench Co., LLC is the owner of Registration No. 555,789 for the stylized
4 type style mark “Quench” in class 32, for “carbonated citrus-flavored soft drink and the
5 concentrate from which the same is made. This registration also issued on March 11, 1952
6 and is on its third renewal.

7 3. Quench Co., LLC is the owner of Registration No. 746,274 for the mark
8 “Quench” and design in class 32 for “grapefruit and lemon flavored soft drinks and
9 concentrates for making the same.” This registration issued on March 5, 1963 and is in its
10 second renewal period.

11 4. Quench Co., LLC is the owner of Registration No. 1,741,580 for the mark
12 “Diet Quench” in class 32 for “soft drinks.” This registration issued on December 22, 1992,
13 and the registration was renewed on schedule.

14 5. Quench Co., LLC is the owner of Registration No. 1,745,989 for the mark
15 “Diet Quench” and design in class 32 for “soft drinks.” This registration issued on January
16 12, 1993, and the registration was renewed on schedule.

17 6. Quench Co., LLC is also the owner of Registration No. 1,064,231 for the mark
18 “Quench” in class 3, for “salivary stimulant, namely, a lemon flavored liquid concentrate.”
19 This registration issued on April 26, 1977, and is in its second renewal period.

20 7. Quench Co., LLC is also the owner of Registration No. 1,047,788 for the mark
21 “Quench” in class 30 for chewing gum. This registration issued on September 7, 1976 and is
22 in its second renewal period.

23 8. In addition to the above-itemized trademark registrations made with the United
24 States Patent and Trademark Office for marks used within the United States, Quench Co.,
25 LLC owns many registrations for “Quench” in many other countries around the globe, for soft
26 drinks and chewing gum and related citrus flavored products.

1 9. The Quench Co., LLC's predecessors-in-interest, either directly or through its
2 licensees, assignees or affiliates, started using marks from the "Quench" family of trademarks
3 on a number of soft drink and related items (such as chewing gum and "salivary stimulants")
4 associated with citrus flavoring in the mid-1920s.

5 10. The citrus flavored soft drinks manufactured and sold by the Quench Co.,
6 LLC's predecessors-in-interest gained wide popularity in many regions of the United States
7 and may have reached the status of a "famous" mark in certain regions and among patrons of
8 a certain age.

9 11. The Quench Co., LLC has never abandoned or evidenced any intent to
10 abandon its marks, but rather has used or has endeavored to use or license the use of each of
11 its "Quench" family of marks continuously since each mark has been created and
12 subsequently registered. Each mark registered by The Quench Co., LLC or its predecessors in
13 interest has been properly and timely renewed and supported by appropriate, valid
14 representations of use.

15 12. The "salivary stimulant" and chewing gum products currently and historically
16 sold by Quench Co., LLC and/or its current licensee (Mueller Sports Medicine, Inc.) under
17 the "Quench" trademarks in classes 3 and 30 are marketed primarily to athletes and
18 participants in sporting events to help alleviate "cotton mouth" and promote hydration. The
19 "Quench" family of products are also target marketed to certain medical patients to alleviate
20 the discomfort of a dry mouth in post-op patients, kidney dialysis patients, and patients on
21 certain antihistamines and other medicines.

22 13. As stated in its intent-to-use application, serial number 78449413, the
23 Applicant, Coca-Cola Company, plans to use its proposed mark "Sprite Quench" in class 32
24 on drinks and related products which will compete directly with the products currently and
25 historically marketed under the "Quench" family of marks, in both the general population
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1 market for soft drinks, but also in the more specific market of athletes and participants in
2 sporting events for its “sports drinks” and “energy drinks.”

3 14. The Applicant’s proposed mark “Sprite Quench” is confusingly similar to the
4 Registrant’s family of “Quench” and “Diet Quench” marks, and Applicant’s proposed mark is
5 likely, when used on or in connection with the Applicant’s proposed goods, to cause
6 confusion and/or mistake or to deceive the consuming public.

7 15. The likelihood of confusion between the Quench Co., LLC’s registered marks
8 and the Applicant’s proposed mark is anticipated to be particularly high when it is considered
9 that the Applicant’s proposed products include sports drinks and energy drinks that will be
10 targeted to athletes and participants in sporting events, as well as soft drinks that will be
11 targeted to the general consuming public.

12 16. If the Applicant is permitted to register and use “Sprite Quench,” the long time
13 prior registrant and long time prior user of the “Quench” family of marks, Quench Co., LLC
14 will be damaged by lost sales, lost license and assignment revenues and opportunities both
15 domestically and abroad, and will suffer injury to its reputation, among other anticipated but
16 difficult to quantify harms.

17 WHEREFORE, Opposer/Registrant The Quench Co., LLC prays that Applicant The
18 Coca-Cola Company’s application Serial Number 78449413 for “Sprite Quench” be denied.

19 DATED this 15th day of July, 2008.

20
21 By: s/ras/
22 Robin A. Schachter
23 WSBA #23970
24 Attorneys for Opposer/Registrant
25 Quench Co., LLC
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this NOTICE OF OPPOSITION is being deposited with the
3 United States Postal Service, First Class Mail, postage prepaid, in an envelope addressed to
4 Applicant's counsel on this 15th day of July, 2008, addressed as follows:

5 Dolores A. Moro
6 The Coca-Cola Company
7 1 Coca Cola Plaza NW
8 Atlanta, GA 30313-2499

9 s/ras/
10 Robin A. Schachter